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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
COMSAT CORPORATION)
) File No. CC-96-45
Petition for Partial Waiver of the)
Universal Service Contribution)
Requirement contained in Section)
54.703 of the Commission's Rules)

TO: The Common Carrier Bureau
Universal Service Branch

CONSOLIDATED REPLY

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February 17, 1998

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Summary

On January 9, 1998, COMSAT filed a Petition for Partial Waiver of the Universal Service contribution set forth in the Commission's Report and Order and codified at 47 C.F.R. Section 54.703. COMSAT supports the principle of universal service and does not seek a waiver of the contribution requirement as to its actual, assessable interstate revenues. COMSAT limits its request only to a waiver of universal service contribution on its international revenues.

While COMSAT's total 1997 revenues from interstate services were approximately \$3.8 million (on which COMSAT's profits were necessarily much smaller), COMSAT estimates that its 1998 universal service liability will be nearly \$5 million. Absent a partial waiver, COMSAT's annual universal service tax will actually be greater than all of its interstate revenues combined.

Comments in support of COMSAT's petition were filed by Gateway Affiliates, Microdevices Worldwide Inc. and Teleglobe USA. These parties generally agree that "ignoring any relation between universal service liability and the quantity of interstate traffic carried . . . works a fundamental inequity and discriminates against carriers that provide de minimis levels of interstate service."¹

Sprint Corporation, BellSouth, PanAmSat and AT&T filed Comments arguing that COMSAT is not alone in deriving a substantial portion of its revenues from international traffic and that granting COMSAT's Petition would encourage similar requests and reduce the USF contribution base. However, as set forth in greater detail herein, no other carrier has been barred by the FCC from entering the U.S. domestic market. COMSAT's situation is therefore unique. COMSAT's \$5 million universal service liability represents a minuscule portion of the \$4 billion expected to be assessed for universal service. Thus, COMSAT's Petition will not materially reduce the USF contribution base.

Finally, requiring COMSAT to contribute to the USF on the basis of its extraordinarily limited interstate revenues

¹ Teleglobe at 3.

violates the universal service guiding principle of competitive neutrality and is neither equitable nor nondiscriminatory under Section 254(d) of the Act.

For no other carrier does the universal service contribution raise such a degree of unfairness or impose so disproportionate a burden. COMSAT respectfully requests the Commission to grant its Petition in furtherance of the fundamental principles of fairness and competitive neutrality, in furtherance of the public interest.

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Universal Service Branch

CONSOLIDATED REPLY

COMSAT Corporation ("COMSAT") herein files its
Consolidated Reply to the Comments filed in response to
COMSAT's Petition for Partial Waiver of Universal Service
Assessment ("Petition") in the above-captioned proceeding.

Comments in support of COMSAT's Petition were filed by
Gateway Affiliates, Microdevices Worldwide Inc.

("Microdevices"), and Teleglobe USA ("Teleglobe"). These
parties generally agree that "ignoring any relation between
universal service liability and the quantity of interstate
traffic carried . . . works a fundamental inequity and
discriminates against carriers that provide *de minimis*

levels of interstate service."¹

Sprint Corporation ("Sprint"), BellSouth Corporation ("BellSouth"), PanAmSat Corporation ("PanAmSat") and AT&T Corp. ("AT&T") filed Comments arguing that "COMSAT is not alone in deriving a substantial portion of its revenues from international traffic;"² and that granting COMSAT's Petition would encourage similar requests and reduce the universal service contribution base.³ However, as set forth in COMSAT's Petition and below, contrary to these Commenters' assertions, no other carrier has been barred by the FCC from entering the U.S. market. COMSAT's situation is therefore unique and the effect of COMSAT's Petition will not be to materially reduce the contribution base.

I. COMSAT is unlike any other carrier subject to the Universal Service Order.

In their Comments, Sprint and AT&T challenge the special circumstances requiring the waiver relief sought by COMSAT. In sum, these parties argue that COMSAT's limited provision of INTELSAT space segment capacity to U.S.

¹ Telelobe at 3, Gateway at 1. Telelobe supports COMSAT's Petition "to the extent that it would establish generic relief applicable for all carriers for whom USF contributions exceed their revenues from interstate services." Telelobe at 1.

² PanAmSat at 2.

³ BellSouth at 1. See also AT&T at 8, PanAmSat at 1.

offshore territories and its limited provision of Inmarsat services in the U.S. constitute interstate service and trigger universal service contribution liability.⁴ However, these parties misunderstand the nature of COMSAT's Petition and the reasons why its request for a waiver should be granted.

The Commission has consistently barred COMSAT from the U.S. market because of its unique role as the U.S. Signatory to Inmarsat and INTELSAT. COMSAT provides Inmarsat services in the United States only in the most exigent circumstances, generally limited to safety of life situations and when no other means of communications are available, and then only pursuant to Special Temporary Authority. As the U.S. Signatory to INTELSAT, COMSAT provides services to and from a few U.S. offshore possessions. These services have been authorized by the FCC to support U.S. Government communications requirements and to enable U.S. possessions, generally in the far-flung Pacific Regions, to have satellite-based facilities in the absence of alternative communications facilities.

COMSAT does not dispute that, under the broad definition of interstate services applied in the Universal

⁴ See Sprint at 2, AT&T at 8.

Service Order, these "international-type" services render COMSAT an interstate carrier for universal service liability. However, falling within this definitional trap triggers a USF liability for COMSAT which is egregiously unfair and patently unlawful. This result warrants a partial waiver of universal service assessment consistent with fundamental principles of competitive neutrality, fairness and the public interest.

Thus, while COMSAT's total 1997 revenues from these interstate type services were approximately \$3.8 million (on which COMSAT's profits were necessarily much smaller), COMSAT estimates that its 1998 universal service liability will be nearly \$5 million. Absent a partial waiver of universal service assessment, COMSAT's annual universal service tax will actually be greater than all of its interstate revenues.

PanAmSat argues that COMSAT is now able to enter the U.S. market subject to the conditions established by the FCC in the DISCO II Order, which PanAmSat alleges gives COMSAT the ability to correct the "inequity" that justifies COMSAT's request.⁵ However, the conditions established by the Commission in DISCO II with respect to COMSAT's entry in

⁵ PanAmSat at 1.

the domestic market are neither appropriate nor lawful, and COMSAT has filed a Petition for Review of that aspect of the DISCO II Order with the U.S. Court of Appeals. Furthermore, even if COMSAT were to choose to accept some or all of the DISCO II conditions, COMSAT has not yet received any authorization from the Commission enabling it to provide service generally in the U.S. domestic market. In fact, COMSAT's \$5 million universal service liability is based on 1997 revenues, most of which accrued prior even to release of the DISCO II Order. Thus, the conditions for COMSAT's domestic entry announced in DISCO II do not provide a reason to deny COMSAT's partial waiver request.

II. Grant of COMSAT's Petition will not materially affect the universal service contribution base.

A number of Commenters are concerned that granting COMSAT's Petition will encourage other Petitions for waivers with equal merit, which when granted would reduce the universal service contribution base.⁶ In response, we note first that, to the extent any Petition has merit, we would expect that the Commission would deal with it appropriately in the interests of law and simple justice. Furthermore, COMSAT's \$5 million universal service liability represents a

⁶ AT&T at 8, PanAmSat at 1, BellSouth at 1.

minuscule portion of the estimated \$4 billion dollars which are expected to be assessed for universal service.

Moreover, in response to COMSAT's Petition, only three Commenters have even claimed to be similarly situated and, unlike COMSAT, none of them has been barred from providing interstate service generally. Consequently, there is no reason for the Commission to be concerned that COMSAT's Petition will drastically reduce the contribution base.

III. Requiring COMSAT to contribute to the universal service fund on the basis of its extraordinarily limited interstate revenues violates the universal service guiding principle of competitive neutrality.

The arguments advanced by PanAmSat, AT&T and others, to the effect that Section 254 requires the Commission to assess COMSAT on the basis of its interstate revenues, fail to take into account that in assessing USF contributions the Commission is guided by the principle of "competitive neutrality."⁷ For purposes of determining universal service contributions, the FCC construes "competitive neutrality" as meaning "that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one

⁷ Order at para. 779.

technology over another."⁸

PanAmSat and Sprint appear to argue that most international revenues earned today are by carriers that also provide interstate services and any competitive disparity among providers as a result of the Order therefore should be minimal.⁹ This argument is unpersuasive with regard to COMSAT. Because of the Commission's restrictions on COMSAT's provision of domestic service, COMSAT's provision of interstate and international services is skewed overwhelmingly towards international services. Perverse competitive incentives are therefore necessarily created by subjecting COMSAT's international revenues to the contribution requirements.¹⁰ COMSAT will plainly be disadvantaged vis a vis competitors providing exclusively international service, contrary to the competitive neutrality principle.

Although it may be true that any competitive disparities between most U.S. interstate and international carriers should be minimal, COMSAT, by virtue of its unique

⁸*Id.* at para. 47.

⁹See *PanAmSat* at 2-3, *Sprint* at 2.

¹⁰See *Microdevices* at 4, *Gateway Affiliates* at 3.

market position, cannot be classed with these other carriers for purposes of an analysis of comparative competitive harm. Absent a waiver, COMSAT cannot compete meaningfully with U.S. interstate carriers that may also provide international services. In large part because of restrictions the Commission has placed on COMSAT's provision of INTELSAT and Inmarsat services, COMSAT competes primarily with carriers that provide only international services, and which are by definition exempt from contribution requirements. Requiring COMSAT effectively to pay a substantial tax on its primarily international revenues places COMSAT at a clear competitive disadvantage against these competitors, many of whom are foreign carriers. The disparate competitive effect urged by Commenters on COMSAT cannot be described as "minimal," or just.

IV. Requiring COMSAT to contribute to the universal service fund on the basis of its limited interstate revenues would be neither "equitable" nor "nondiscriminatory" under Section 254(d).

The Commission has clearly stated its intent to treat all telecommunications carriers in the U.S. market with an even hand, not differentiating unfairly among service providers.¹¹ PanAmSat and others seek a patently

¹¹See, e.g. Order at para. 48.

inequitable result to the extent that they urge the Commission to require COMSAT, which provides a minimal amount of interstate service, to contribute to the universal service fund based on its combined interstate and international revenues. If COMSAT's Petition is denied on the basis suggested by these Commenters, the absurd result will be that COMSAT's universal service contributions will exceed the amount of its interstate revenues, and far exceed its profits on these services. This inevitable and harsh result cannot be considered "equitable."

COMSAT is unlike any other service provider, and hence the inequitable effect would be of even greater magnitude. The Commission has chosen to place on COMSAT unique operating parameters, restricting COMSAT's ability to offer interstate services to very narrow and limited circumstances: COMSAT is subject to a greater degree of regulation and more burdensome limitations on its ability to serve certain markets than any other U.S. carrier, including AT&T and Sprint.

For similar reasons, the inclusion of COMSAT's international revenues in the contribution requirement sought by several Commenters is not "nondiscriminatory." As noted above, under the current universal service scheme

carriers providing only international revenues are exempted from the contribution requirements, while COMSAT, which under the Commission's policies provides only a *de minimis* amount of interstate service, will be required to make a very substantial payment. Commenters have offered no justification for this disparate effect.

Indeed, the Commission's very rationale for requiring carriers that provide both international and interstate services to contribute based on both interstate and international revenues highlights the discriminatory treatment sought, for example, by Sprint. Sprint seeks to justify assessment of COMSAT's contributions on both interstate and international revenues on the Commission's observation that international carriers benefited from universal service because they use the PSTN to originate or terminate calls.¹² However, there is no difference between the benefits accruing to COMSAT and exclusively international carriers.

Conclusion

Unlike either the exclusively international carriers with which COMSAT competes or U.S. interstate carriers,

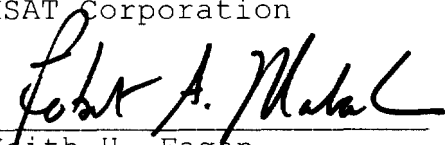
¹² See Sprint at 2.

COMSAT is both burdened by universal service obligations and prohibited from competing in the U.S. domestic market. Unless a partial waiver is granted, COMSAT's multi-million dollar universal service bill will have a real, adverse impact on COMSAT's ability to compete -- far greater than the burden imposed on other carriers. Unlike the case with other carriers, virtually none of COMSAT's assessment can be recovered from end-users or offset by reduced access charges. Most of COMSAT's assessment derives from operations that compete with foreign carriers that are entirely exempt from the contribution requirement.

For no other carrier does universal service contribution raise such a degree of unfairness or impose so disproportionate a burden. COMSAT respectfully requests the Commission to grant its Petition in furtherance of the fundamental principles of fairness and competitive neutrality, and in furtherance of the public interest.

Respectfully submitted
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February 17, 1998

Certificate of Service

I hereby certify that a copy of the foregoing Consolidated Reply of COMSAT Corporation was mailed by first-class mail, postage prepaid, this 17th day of February 1998 to each of the following:

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